

BEFORE THE
POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF
ST. REGIS CORPORATION,

Appellant,

v.

PUGET SOUND AIR POLLUTION
CONTROL AGENCY, and STATE
OF WASHINGTON, DEPARTMENT
OF ECOLOGY,

Respondents.

PCHB No. 83-214

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW AND
ORDER

This matter, the appeal of a \$250 civil penalty (No. 5865) for emissions allegedly in violation of Department of Ecology WAC 173-405-040(10), opacity, came on for hearing before the Pollution Control Hearings Board, Gayle Rothrock, Chairman, David Akana, Lawyer Member, and Lawrence J. Faulk, Vice Chairman, convened at Lacey, Washington, on March 13, 1984. Administrative Law Judge William A. Harrison presided. Respondent elected a formal hearing pursuant to RCW 43.21B.230.

1 Appellant appeared by its attorney Donald L. Anderson. Respondent
2 Puget Sound Air Pollution Control Agency appeared by its attorney
3 Keith D. McGoffin. Respondent State Department of Ecology appeared by
4 Wick Dufford, Assistant Attorney General. Court reporter Nancy J.
5 Swenson recorded the proceedings.

6 Witnesses were sworn and testified. Exhibits were examined. From
7 testimony heard and exhibits examined, the Pollution Control Hearings
8 Board makes these

9 FINDINGS OF FACT

10 I

11 Respondents Department of Ecology (DOE) and Puget Sound Air
12 Pollution Control Agency (PSAPCA) have placed in evidence Order of
13 Declaration No. 75-49 which delegates various air pollution
14 enforcement jurisdiction over major industries to PSAPCA.

15 II

16 Appellant, St. Regis Corporation owns and operates a kraft pulping
17 mill in Tacoma, Washington.

18 III

19 On September 15, 1983, at approximately 1:35 p.m., respondent's
20 inspector, while on routine patrol, observed a white smoke emission
21 from the No. 3 recovery furnace at appellant's mill. The inspector
22 observed the emission for sixteen and one-half consecutive minutes of
23 twenty minutes, with opacity readings recorded every fifteen seconds
24 ranging between forty and fifty-five percent opacity.

25 The inspector contacted an official at the mill at approximately

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1 No person shall cause or allow the emission of a
2 plume from any kraft recovery furnace or lime kiln,
3 or other source which has an average opacity greater
4 than thirty-five percent for more than six
5 consecutive minutes in any sixty minute period...
6 WAC 173-405-040(10).

7 This regulation provides opacity emission standards for the kraft
8 recovery furnaces.

9 III

10 Appellant contends that the emission should be excused because the
11 emission was composed of steam instead of smoke. The Board finds that
12 respondent PSAPCA did prove that the emission violated WAC
13 173-405-040(10).

14 IV

15 Appellant argues that WAC 173-405-040(10) calling for a
16 thirty-five percent opacity standard is illegal because it is in
17 excess of the statutory authority of the DOE. The Board disagrees.
18 We reaffirm our earlier decision concerning this question. The
19 reasoning for that decision is set out in the Board's opinion issued
20 for consolidated cases PCHB Nos. 83-175, 83-179, 83-186, and 83-187; a
21 copy of which is attached.

22 V

23 Appellant also contends that PSAPCA does not have authority to
24 issue notices of violation or notices of civil penalty based upon WAC
25 regulations, which delegate authority to PSAPCA.

26 The Board disagrees. The delegation of authority filed with the
27 Board is valid and gives PSAPCA the authority to issue notices of

1 2:51 p.m. and issued to the appellant a Notice of Violation No. 19202
2 (for the No. 3 recovery furnace) pursuant to WAC 173-405-040(10) which
3 is the subject of this appeal.

4 IV

5 Appellant contends that the emission was the result of low level
6 inversion in ambient air conditions along with massive amounts of
7 super heated steam.

8 V

9 Civil Penalty No. 5865 in the amount of \$250 was issued to
10 appellant on November 21, 1983.

11 VI

12 Feeling aggrieved by the decision of the Agency, appellant filed
13 an appeal of the order with this Board on December 21, 1983, and the
14 matter came to formal hearing.

15 VII

16 Any Conclusion of Law which should be deemed a Finding of Fact is
17 hereby adopted as such.

18 From these Findings the Board comes to the following

19 CONCLUSIONS OF LAW

20 I

21 The Board has jurisdiction over the persons and the subject matter
22 of this proceeding. RCW 43.21B.110.

23 II

24 Notice of Violation No. 19202 was issued to the appellant for
25 violation of emission standards:

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1 violation and notices of civil penalty in these types of cases.

2 VI

3 Respondent DOE argues that the penalty suspended by the Board in
4 PCHB No. 83-187 should be removed and St. Regis should be required to
5 pay an additional \$250 because of another violation within the
6 six-month period established by the Board in that prior proceeding.

7 The Board disagrees. The order referred to (PCHB No. 83-187) was
8 issued February 22, 1984. The six-month period runs from that date.
9 The violation which is the subject of this appeal occurred
10 September 15, 1983.

11 The Board believes it would be unreasonable and unfair to assess a
12 penalty for a violation which occurred before the Board issued the
13 opinion with the "suspension" stipulation.

14 VII

15 Any Finding of Fact which should be deemed a Conclusion of Law is
16 hereby adopted as such.

17 From these Conclusions the Board enters this
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ORDER

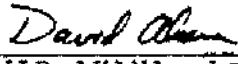
Notice of Violation No. 19202 was properly issued and Civil
Penalty No. 8565 in the amount of \$250 is affirmed.

DONE this 23rd day of MARCH, 1984, at Lacey, Washington.

POLLUTION CONTROL HEARINGS BOARD


LAWRENCE J. FAULK, Vice Chairman


GAYLE ROTHROCK, Chairman


DAVID AKANA, Lawyer Member

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